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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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Attorneys for Defendant Morgan Stanley & Co.
Incorporated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NATHALIE DECRET, an individual,

Plaintiff,

vs.

MORGAN STANLEY & CO.
INCORPORATED, a corporation, and DOES 1
through 20, inclusive,

Defendants.

Case No.

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. §1441(B) (DIVERSITY)**

E-filing

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REED SMITH LLP

A limited liability partnership formed in the State of Delaware

1 **PLEASE TAKE NOTICE** that Defendant Morgan Stanley & Co. Incorporated (“Morgan
2 Stanley”) hereby removes to this Court the state court action described below. Removal is warranted
3 under 28 U.S.C. §1441(b) because this is a diversity action over which this Court has original
4 jurisdiction under 28 U.S.C. §1332.

5
6 1. On April 5, 2007, an action was commenced in the Superior Court of the State of
7 California in and for the City and County of San Francisco, entitled *Nathalie Decret, an individual v.*
8 *Morgan Stanley & Co. Incorporated, a corporation; and Does 1 through 20, inclusive*, as Case No.
9 CGC-07-462078. A copy of the complaint is attached as Exhibit A.

10
11 2. On May 15, 2007, Morgan Stanley filed an Answer to Plaintiff’s complaint in the
12 Superior Court of the State of California for the City and County of San Francisco. A copy of
13 Morgan Stanley’s Answer is attached as Exhibit B.

14
15 3. No further proceedings have been had in the state court action.

16
17 4. As set forth below, this case is properly removed to this Court pursuant to 28 U.S.C.
18 §1441 because Morgan Stanley has satisfied the procedural requirements for removal and this Court
19 has subject matter over this action pursuant to 28 U.S.C. §1332.

20
21 **I. MORGAN STANLEY HAS SATISFIED THE PROCEDURAL**
22 **REQUIREMENTS FOR REMOVAL**

23
24 5. Venue is proper in this Court because it is the “district and division embracing the
25 place where such action is pending.” *See* 28 U.S.C. §1441(a).

26
27 6. On April 17, 2007, Plaintiff mailed a copy of the summons, the complaint and a
28 Notice and Acknowledgment of Receipt – Civil to Morgan Stanley’s Legal and Compliance

1 Division. A copy of the summons and the Notice and Acknowledgment of Receipt – Civil are
2 attached as Exhibits C and D.

3
4 7. Counsel for Morgan Stanley executed the Acknowledgment of Receipt of the
5 Summons and Complaint on May 2, 2007 (Exhibit D) and served the Acknowledgment of Receipt
6 on Plaintiff's counsel on May 3, 2007. Service of the summons is deemed complete on May 2,
7 2007, the date on which Defendant executed the Acknowledgment of Receipt. Therefore, this
8 Notice of Removal is timely under 28 U.S.C. §1446(b).

9
10 8. Pursuant to 28 U.S.C. §1446(d), a copy of this Notice of Removal is being served on
11 counsel for Plaintiff and a copy is being filed with the Clerk of the Court for the Superior Court of
12 the State of California for the County of San Francisco.

13
14 **II. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER**
15 **JURISDICTION PURSUANT TO 28 U.S.C. §§1332 AND 1441**

16
17 9. This action is a civil action of which this Court has original jurisdiction under 28
18 U.S.C. §1332 and is one which may be removed to this Court by Morgan Stanley pursuant to the
19 provision of 28 U.S.C. §1441(b) because it is a civil action between citizens of different states and
20 the matter in controversy exceeds the sum of \$75,000, exclusive of interests and costs.

21
22 **A. The Amount In Controversy Requirement Is Satisfied**

23
24 10. Plaintiff alleges that Defendant Morgan Stanley is liable for more than \$2.6 million in
25 transfers made by her former husband from their joint accounts at Morgan Stanley (Exhibit A at ¶5).
26 Plaintiff seeks in excess of \$2 million in damages from Morgan Stanley (Exhibit A at ¶15).

27
28 **B. There Is Complete Diversity Of Citizenship**

11. Plaintiff Nathalie Decret was and still is a citizen of the State of California (Exhibit A at ¶3). Morgan Stanley was at the time of filing of this action, and still is, a corporation incorporated under the laws of Delaware with its principal place of business in the State of New York. Morgan Stanley is the only named defendant and the only defendant that has been served with a summons and complaint in this action. For purposes of removal, "the citizenship of defendants sued under fictitious names shall be disregarded." 28 U.S.C. §1441(a).

DATED: May 16, 2007.

REED SMITH LLP

By Eric G. Wallis

Eric G. Wallis
Attorneys for Defendant Morgan Stanley & Co.
Incorporated

DOCSOAK-9873076.1

REED SMITH LLP

A limited liability partnership formed in the State of Delaware

EXHIBIT A

COPY

FILED
San Francisco County Superior Court

APR 05 2007

GORDON PARK-LI, Clerk
BY: *Deborah Steppe*
DEBORAH STEPPE, Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

SEP 07 2007 -9⁰⁰AM

DEPARTMENT 212

SUPERIOR COURT OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

IMAGED
APR - 6 2007

NATHALIE DECRET, an individual,

Plaintiff,

v.

MORGAN STANLEY & CO.,
INCORPORATED, a corporation; and DOES
1 through 20, inclusive,

Defendants.

No. **CGC-07-462073**
**COMPLAINT FOR BREACH OF
FIDUCIARY DUTY; NEGLIGENT
SUPERVISION; NEGLIGENCE; FRAUD;
AND BREACH OF CONTRACT**

Plaintiff Natalie Decret ("DECRET" or "Plaintiff"), AKA Nathalie Tournier-Decret, alleges the following:

General Allegations

1. Morgan Stanley & Co., Incorporated, ("MS" or "Defendant") is a Delaware corporation and Plaintiff is informed and believes and thereon alleges that MS's principal California offices are in San Francisco, California. MS has also been known as Morgan Stanley Dean Witter and Morgan Stanley DW.

1 2. Defendants DOES 1 through 20, inclusive, are sued herein by such fictitious names
2 in that Plaintiff does not at this time know their true names, capacities, nor specific activities of said
3 Defendants, but alleges that each of said Defendants is or may be legally liable to Plaintiff, and
4 therefore Plaintiff prays that the true names, capacities and activities of said Defendants may be
5 inserted herein when the same is ascertained.

6 3. DECRET, who is 47 years old and a mother of four children, currently resides in
7 Santa Barbara, California, and has resided there since approximately December, 2002. DECRET is
8 currently going through a divorce from her husband, of over ten years, David. Through the divorce
9 process, DECRET has found that David has committed numerous financial improprieties against her
10 during their marriage, including the serial forging of her name on important financial documents, and
11 otherwise defrauding her and their community estate out of millions of dollars. DECRET has also
12 recently learned that MS aided and abetted David in his wrongdoing, and otherwise breached their
13 duties to DECRET in not providing her with material information, actively concealing information
14 from her, not acting in DECRET's best interests, and further not acting lawfully, ethically or fairly,
15 directly contributing to David's deceit and DECRET's damages.

16 4. DECRET and David are both French and were living in France until moving to Santa
17 Barbara. David married DECRET in 1996 after his professional tennis career was cut short by an
18 injury. DECRET was the successful business executive and entrepreneur and David worked for
19 DECRET's company. David convinced DECRET that their lives would be much better in the
20 United States, and in 1999, David and DECRET began taking steps which would allow them to
21 move to the US permanently. One of the steps which DECRET understands that they were advised
22 to undertake was to open up financial accounts here, including a brokerage account. David
23 recommended that they open up an account with a Smith Barney broker, Thomas Lowell ("Lowell").
24 DECRET, not being able to tell one investment adviser from the next, agreed. Soon thereafter, in
25 early 1999, Lowell moved to MS and DECRET and David followed with their accounts.

26 5. After finding out about a second affair David had (that she knew of), DECRET
27 decided to divorce David in the spring of 2005. Through the divorce action, DECRET has learned of
28 much impropriety by David during the course of their marriage, much of which was carried out

1 through MS accounts in the name of DECRET and David, with David improperly taking money out
2 of the accounts. The accounts at MS, as DECRET understands it, were set up so that any wire
3 transfers would require the signatures of both account holders. Beginning in December, 2000 David
4 began wiring money out of their accounts, forging DECRET's signature on the wire instructions to
5 unlawfully effectuate the transactions. Attached hereto as Exhibit A is a list of wire transfers in the
6 aggregate amount of \$2,693,082.20, all of which were effectuated on forged signatures of DECRET.
7 MS knew or should have known that DECRET's signatures were forged, and are otherwise liable for
8 the losses DECRET has suffered as the result of MS wiring these funds out of DECRET's accounts
9 without her genuine signature. DECRET is unaware of any of these funds being used for her or her
10 family's benefit, but she is still investigating exactly what did happen to those wired funds. Attached
11 hereto as Exhibit B is a copy of the report prepared by the handwriting expert, without exhibits
12 thereto, setting forth that all of the wire transfers in question, among other documents, had forged
13 signatures of Decret.

14 6. Though some of the money was wired to accounts in the name of both DECRET and
15 David, DECRET was previously unaware of money being wired into those accounts, which are in
16 France, and is attempting to determine where the money ended up, though she does not believe it
17 was used to benefit the marital estate. Other money was wired to a business David started in or
18 about 2003, The House of David, and that money has apparently been either lost or spent by David.
19 David also took out hundreds of thousand of dollars from MS by way of drafts, which required only
20 his signature. MS still had a duty to inform DECRET of these transactions, in a way that was
21 calculated to reach DECRET.

22 7. DECRET was very busy in her role as the family's breadwinner, and as a parent.
23 Anytime DECRET expressed any interest in the MS accounts, David made it very clear that he was
24 taking care of everything, and she did not need to worry about it. David also made sure DECRET
25 did not have access to any mail which came to their residence. Though DECRET had internet access
26 to the MS accounts early on, it eventually stopped working with her passwords, and both David and
27 Lowell managed to put DECRET off from re-obtaining the ability to gain such access to her
28 accounts. Though this was not her priority, over the course of eighteen months, ending when Lowell

1 left MS in or about August 2004 to go to UBS Financial Services, DECRET tried to gain new access
2 codes from both David and Lowell, always being put off from both of them. In fact, DECRET spoke
3 with Lowell the day before he left MS, which apparently had been long-planned by him, and Lowell
4 told DECRET that he would call her the next day with the new access codes for the accounts. When
5 Lowell did not call, DECRET called him, only to find out he had left.

6 8. There are many examples of how David would hide things from DECRET. Perhaps a
7 more persuasive example of how he would hide things from DECRET and otherwise act as alleged
8 herein, comes from a third party, GE Commercial Finance ("GE"). David had purchased some
9 expensive items for his business, financing them through GE, or a predecessor thereto. GE
10 apparently would not give credit to David without a guarantee from DECRET. So, David just forged
11 DECRET's name on the a guarantee without DECRET's knowledge. After DECRET was contacted
12 by GE in 2006 about the guarantee, as David did not pay off the loan, DECRET received a letter
13 from GE loss recovery services agent Melanie Knippschild dated October 16, 2006 and attached
14 hereto as Exhibit C. In the letter, Ms. Knippschild describes an "upset" call from David that
15 DECRET had been sent a letter from GE – a letter that David obviously had intercepted and did not
16 disclose to DECRET. David was upset that the demand letter had been written to DECRET, with his
17 explaining that he was solely responsible for the debt. David did not want DECRET to find out
18 about the forged guarantee, which is obvious from what Ms. Knippschild wrote, and the fact that we
19 know the guarantee was forged.

20 9. The GE letter does more than help explain how David worked to hide things from
21 DECRET. As is referenced in the first paragraph of Exhibit C, Ms. Knippschild enclosed the
22 documents relating to David's GE account to DECRET. DECRET was shocked and amazed at what
23 she found within those documents – a three page fax from Lowell, apparently originally faxed to
24 David from Lowell on January 11, 2004, and then, per the fax marks at the top of the Lowell fax
25 cover sheet, re-faxed to GE on February 26, 2004. The three page fax (from Lowell) is attached
26 hereto as Exhibit D. The document is a summary of David's and DECRET's purported account
27 values at MS, obviously to help David get his GE financing. The purported summary overstates
28 David's and DECRET's account values by approximately \$1,846,000. Lowell's document shows

1 the account values at \$2,547,340.11, when per an actual MS summary of their account values as of
2 January 31, 2004, the true value is \$685,239.14. Attached hereto as Exhibit E is a copy of the actual
3 MS summary of accounts with the accurate figure. Lowell and MS did not only aid and abet David
4 to defraud DECRET, they apparently also did so to defraud at least one creditor.

5 10. Lowell apparently did not just help David on a one-time basis defraud people other
6 than DECRET. As a part of David's document production in the family law case, DECRET's
7 family law lawyer received an August 25, 2004 letter prepared by Lowell addressed generically "To
8 Whom It May Concern." The letter, signed by Lowell and on MS letterhead, states that David and
9 DECRET had "securities and cash on deposit at Morgan Stanley totaling approximately
10 \$4,052,260...." Attached hereto as Exhibit F is a copy of Lowell's August 25, 2004 letter, as well as
11 two pages of MS documentation showing that in May, 2004, David and DECRET's accounts had a
12 combined value of \$223,073.69. The accounts should not have changed substantially between May
13 and August of 2004.

14 11. DECRET recently found wire transfer documents with her forged signature that were
15 blank in material ways, including one where the document was completely blank except for
16 signatures, and could have been copied by David and/or Lowell. One of the partially blank wire
17 transfers was to go to a bank in Switzerland, where it is possible David has hidden some of the
18 unlawfully wired funds. Also, when DECRET asked David and Lowell why the account value was
19 going down so much, both told DECRET that there were significant losses in the stock market,
20 without mentioning anything about the wire transfers.

21 12. David, of course, now claims poverty. DECRET will likely never be able to recover
22 these funds from David. She will continue to investigate, but ultimately, in order for DECRET to
23 recover any of the losses described above, MS must be found liable for the duties it has breached to
24 DECRET, allowing the funds to be wired out of the accounts without DECRET's actual signature,
25 and the active participation of MS agents in helping David to perpetrate his wrongful conduct.
26 David filed for bankruptcy, under chapter 7, in or about February 2007.

27 13. Plaintiff placed her trust and confidence in MS and Lowell. At all relevant times, MS
28 was a broker-dealer registered to sell securities by the SEC, the NASD and the California

1 Department of Corporations. Also, at all relevant times, Lowell was a registered representative of
 2 MS, and took all actions alleged herein within the course and scope of his agency and employment
 3 with MS, and/or with apparent authority.

4 14. MS is also liable to Plaintiff based on Lowell's actions, pursuant to, among other
 5 theories, Respondeat Superior.

6 15. Though Plaintiff will not be able to know her exact damages until MS provides
 7 certain documents to Plaintiff in the discovery process, and until further investigation can be
 8 completed, Plaintiff asks for the damages she believes she has lost in the amount of no less than \$2
 9 million, as well lost return on her principal in an amount to be proven at the hearing herein. Plaintiff
 10 will ask for leave of the court to amend the complaint once the damages are ascertained in the
 11 discovery process. Because of the egregious nature of the Defendant's actions, and the total
 12 disregard for Plaintiff's rights and welfare, and because Defendant acted with malice, Plaintiff also
 13 seeks an award of exemplary and punitive damages to punish the Defendant for its actions, through
 14 its agents.

15 **FIRST CAUSE OF ACTION**
 16 **Breach of Fiduciary Duty**

17 16. Plaintiff repeats and re-alleges all of the allegations contained in Paragraphs 1 through
 18 14 of the complaint and incorporates same by reference as if set forth in full herein.

19 17. Because of the trust and confidence Plaintiff placed in Defendant, and the nature of the
 20 relationship between Plaintiff and Defendant, Defendant owed Plaintiff the duties of a fiduciary,
 21 including, but not limited to:

- 22 a. The duty to deal fairly and honestly with Plaintiff, to act with the highest good faith
 23 toward Plaintiff, and to put Plaintiff's interests over Defendant's interests;
- 24 b. The duty to manage Plaintiff's accounts in the best interests of Plaintiff;
- 25 c. The duty to provide Plaintiff with any material information related to her accounts, or
 26 any transactions therein;
- 27 d. The duty to only engage in transactions authorized by Plaintiff; and
 28

1 e. The duty to obey the instructions of Plaintiff, and exercise reasonable skill in its
2 employment and ordinary diligence.

3 18. Defendant breached its fiduciary duty to Plaintiff by, among other things, failing to
4 abide by the foregoing duties.

5 19. As a direct and proximate result of Defendant's breaches of its fiduciary duties to
6 Plaintiff, Plaintiff has suffered damages in amounts as described hereinabove, and more specifically
7 requested in the prayer for relief, below. Because of Defendant's callousness toward Plaintiff, and
8 wanton disregard for Plaintiff's rights and welfare, Plaintiff requests an award of exemplary and
9 punitive damages against Defendant.

10 **SECOND CAUSE OF ACTION**
11 **Negligent Supervision**

12 20. Plaintiff repeats and re-alleges all of the allegations contained in Paragraphs 1 through
13 14 of the complaint and incorporates same by reference as if set forth in full herein.

14 21. MS owed Plaintiff the duty to properly supervise their employees and agents, and to
15 hire only responsible and trustworthy registered representatives, including Lowell.

16 22. MS failed to properly supervise Lowell and their other registered representatives,
17 creating a situation wherein it was possible for them to take the actions as herein described.

18 23. As a proximate result of MS's negligent supervision, Plaintiff has sustained damages
19 as set out above and in the prayer for relief, below.

20 24. It was foreseeable that Plaintiff would suffer the type of damages she has suffered as a
21 result of MS's negligent supervision of their registered representatives.

22 **THIRD CAUSE OF ACTION**
23 **Negligence**

24 25. Plaintiff repeats and re-alleges all of the allegations contained in Paragraphs 1 through
25 14 of the complaint and incorporates same by reference as if set forth in full herein.

26 26. As Plaintiff's financial advisors, Defendant had a duty to advise Plaintiff properly and
27 in accordance with California and federal law and NASD rules and regulations, and to follow
28 Plaintiff's instructions. The rendering of improper investment advice constitutes negligence under
California law. Twomey v. Mitchum, Jones & Templeton, Inc. (1968) 262 Cal.App.2d 690, 709.

1 Furthermore, when an agent does not follow the principal's instructions, by, for instance, failing to
2 have two authentic signatures on wiring instructions prior to effectuating a wire, the agent, MS, will
3 be liable for failing to strictly follow those instructions. The Defendant breached its duty to Plaintiff
4 by negligently following forged wiring instructions, and otherwise violating California and federal
5 law and NASD rules and regulations, and by acting as otherwise set out herein.

6 27. Industry rules and regulations are probative evidence of a broker's standard of
7 conduct. Miley v. MS & Co., 637 F.2d 318, 333 (5th Cir. 1981) (industry rules are "excellent tools
8 against which to assess in part the reasonableness or excessiveness of a broker's handling of an
9 investor's account"); Lange v. H. Hentz & Co., 418 F.Supp. 1376, 1383-84 (N.D. Tex. 1976) (NASD
10 rules evidence standard of care member should achieve); Mihara v. Dean Witter & Co., 619 F.2d
11 814, 824 (9th Cir. 1980) (industry rules "requiring that each securities broker 'know [his] customer'
12 has been recognized as a standard to which all brokers using the Exchange must be held, the
13 violation of which is tantamount to fraud.").

14 28. As a result of Defendants' negligence, Plaintiff sustained losses as described above
15 and in the prayer for relief below.

16 **FOURTH CAUSE OF ACTION**
17 **Fraud**

18 29. Plaintiff repeats and re-alleges all of the allegations contained in Paragraphs 1 through
19 14 of the complaint and incorporates same by reference as if set forth in full herein.

20 30. Defendant made numerous misrepresentations and withheld material facts to Plaintiff
21 regarding Plaintiff's accounts with MS, as alleged above.

22 31. When Defendant made these misrepresentations, it knew them to be false, or
23 reasonably should have known, and these misrepresentations were made by Defendant with the
24 intent to (a) deceive Plaintiff; and (b) obfuscate what was going on in the accounts.

25 32. Plaintiff, at the time these representations were made, and at the time Plaintiff took
26 the actions herein alleged, was ignorant of the falsity of the representations, and believed them to be
27 true. In reliance on these representations, and withholding of material facts, Plaintiff was kept
28 ignorant of what was going on in her accounts, and the depletion of her accounts was allowed to

1 continue. Had Plaintiff known the actual facts, she would have been able to prevent the further
2 depletion of her accounts, and otherwise prevent the conversion of funds in her marital estate..

3 33. As a result of Defendant's intentional misrepresentations, and withholding of material
4 facts, as alleged herein, Plaintiff was left in the dark, and induced to keep the status quo. As a result
5 of Defendant's misrepresentations, Plaintiff has suffered damages as set forth hereinabove. Because
6 of Defendant's callousness toward Plaintiff, and wanton disregard for Plaintiff's rights and welfare,
7 and in that Defendant's actions rise to the level of fraud, Plaintiff requests an award of exemplary
8 and punitive damages according to proof at the time of the arbitration herein.

9 **FIFTH CAUSE OF ACTION**
10 **Breach of Contract**

11 34. Plaintiff repeats and re-alleges all of the allegations contained in Paragraphs 1 through
12 14 of the complaint and incorporates same by reference as if set forth in full herein.

13 35. Plaintiff is informed and believes that the account documentation with MS requires
14 MS to have both David's and DECRET's signature on any wiring instructions in order to effectuate a
15 wire. This account documentation forms an agreement between the parties.

16 36. Plaintiff performed all of her obligations under the terms of this account
17 documentation and agreement.

18 37. Defendant breached the terms of this agreement by taking direction only from
19 David, even though David had no authority to act on Plaintiff's behalf, and even though DECRET's
20 signature was required, Defendant wired money without it.

21 38. As a direct result of Defendant's breaches of the agreement, Plaintiff has been damaged
22 by unauthorized wires from the accounts. Plaintiff has further had consequential damages which will
23 be shown according to proof at the time of the trial.

24 WHEREFORE, Plaintiff prays for an award against Defendant, as follows:

- 25 1. For special damages according to proof at the time of trial;
- 26 2. For general, incidental and consequential damages according to proof at the time of
27 trial;
- 28 3. For punitive and exemplary damages according to proof at the time of trial;
4. For costs of the arbitration herein incurred;

1 5. For reasonable attorneys' fees; and

2 6. For such other and further relief as the court may deem just and proper.

3
4 Dated: April 5, 2007

Law Offices of Jeffrey A. Feldman

5
6
7 By

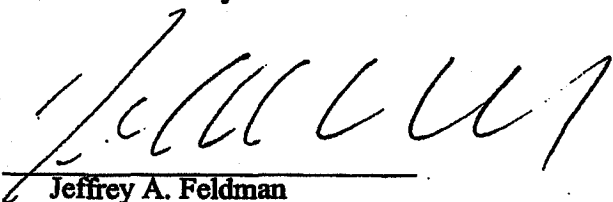

Jeffrey A. Feldman
Attorney for Plaintiff

EXHIBIT B

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13 Attorneys for Defendant

14
 15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 16 FOR THE COUNTY OF SAN FRANCISCO
 17 UNLIMITED JURISDICTION

18 NATHALIE DECRET, an individual,
 19 Plaintiff,

20 vs.

21 MORGAN STANLEY & CO.,
 22 INCORPORATED, a corporation; and DOES 1
 through 20, inclusive,

23 Defendants.
 24
 25
 26
 27
 28

ENDORSED
FILED
 San Francisco County Superior Court
 MAY 15 2007
 GORDON F. HALL, Clerk
 BY: MARIA SANCHEZ
 Deputy Clerk

No. CGC-07-462078

ANSWER TO COMPLAINT

FAXED

REED SMITH LLP
 A limited liability partnership formed in the State of Delaware

Defendant Morgan Stanley & Co. Incorporated (Defendant), alleges the following:

General Denial

1. Answering Plaintiff's unverified Complaint, Defendant denies every allegation contained therein and denies that by reason of any act or omission by it, its agents, or independent contractors, Plaintiff was injured or damaged in any sum, or at all.

Affirmative Defenses

2. As a first affirmative defense to each cause of action in the Complaint, Defendant alleges that the Complaint is barred by Plaintiff's failure to comply with arbitration agreements entered into with Defendant.

3. As a second affirmative defense to each cause of action in the Complaint, Defendant alleges that the Complaint does not state facts sufficient to constitute a cause of action against this Defendant.

4. As a third affirmative defense to each cause of action in the Complaint, Defendant alleges that Plaintiff failed to exercise reasonable care and diligence to mitigate her alleged damages.

5. As a fourth affirmative defense to the Fifth Cause of Action in the Complaint, Defendant alleges that the Complaint is barred by the provisions of California Code of Civil Procedure Section 337(1) in that more than four years elapsed between the accrual of Plaintiff's alleged cause of action and the filing of Plaintiff's Complaint.

1 6. As a fifth affirmative defense to each cause of action in the Complaint, Defendant
2 alleges that Plaintiff, her agents, employees, servants and representatives were negligent or legally
3 responsible or otherwise at fault for the damages alleged in Plaintiff's Complaint. Defendant
4 therefore requests that in the event of a finding of any liability in favor of Plaintiff or settlement or
5 judgment against this Defendant, an apportionment of fault be made among all parties as permitted
6 by Li v. Yellow Cab Company and American Motorcycle Association v. Superior Court by the
7 court or jury. Defendant further requests a judgment and declaration of partial indemnification and
8 contribution against all other parties or persons in accordance with the apportionment of fault.

9
10 7. As sixth affirmative defense to First, Second, and Third Causes of Action in the
11 Complaint, Defendant alleges that the Complaint is barred by the provisions of California Code of
12 Civil Procedure Section 339(1) in that more than two years elapsed between the accrual of
13 Plaintiff's alleged cause of action and the filing of Plaintiff's Complaint.

14
15 8. As a seventh affirmative defense to each cause of action in the Complaint Defendant
16 alleges that the Complaint is barred by the doctrine of laches in that Plaintiff waited an
17 unreasonable period of time before pursuing her alleged remedies.

18
19 9. As an eighth affirmative defense to each cause of action in the Complaint Defendant
20 alleges that the Complaint is barred because at all times mentioned Plaintiff consented to the acts
21 and events set forth in therein.

22
23 10. As ninth affirmative defense to First Cause of Action in the Complaint, Defendant
24 alleges that the Complaint is barred by the provisions of California Code of Civil Procedure
25 Section 343 in that more than four years elapsed between the accrual of Plaintiff's alleged cause of
26 action and the filing of Plaintiff's Complaint.

1 11. As a tenth affirmative defense to each cause of action in the Complaint Defendant
2 alleges that the Complaint is barred by the doctrines of waiver and estoppel.

3
4 12. As an eleventh affirmative defense to each cause of action in the Complaint,
5 Defendant alleges that persons not parties to this action were negligent or legally responsible or
6 otherwise at fault for the damages alleged in Plaintiff's Complaint. Defendant therefore requests
7 that in the event of a finding of any liability in favor of Plaintiff or settlement or judgment against
8 this Defendant, an apportionment of fault be made among all parties as permitted by Li v. Yellow
9 Cab Company and American Motorcycle Association v. Superior Court by the court or jury.
10 Defendant further requests a judgment and declaration of partial indemnification and contribution
11 against all other parties or persons in accordance with the apportionment of fault.

12
13 13. As a twelfth affirmative defense to each cause of action in the Complaint Defendant
14 alleges that Plaintiff was careless and negligent in the matters alleged, thereby causing and
15 contributing to any injury, damage or loss to Plaintiff.

16
17 14. As a thirteenth affirmative defense to the First and Fourth Causes of Action in the
18 Complaint Defendant alleges that the Complaint is barred by the provisions of California Code of
19 Civil Procedure Section 338(d) in that more than three years elapsed between the accrual of
20 Plaintiff's alleged cause of action and the filing of Plaintiff's Complaint.

1 THEREFORE, Defendant demands judgment in its favor, costs of suit, and all other proper
2 relief.

3
4 DATED: May 15, 2007.

5 REED SMITH LLP

6
7 By 

Eric G. Wallis

Attorneys for Defendant

REED SMITH LLP

A limited liability partnership formed in the State of Delaware

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 1999 Harrison Street, Suite 2400, Oakland, CA 94612-3572. On May 15, 2007, I served the following document(s) by the method indicated below:

ANSWER TO COMPLAINT

- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.

Jeffrey A. Feldman
Law Offices of Jeffrey A. Feldman
505 Montgomery Street
7th Floor
San Francisco, CA 94111

Attorney for Plaintiff

Telephone: (415) 391-5555
Facsimile: (415) 391-8888

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 15, 2007, at Oakland, California.


Mary Abbott

EXHIBIT C

SUMMONS
(CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

MORGAN STANLEY & CO., INCORPORATED, a corporation;
and DOES 1 through 20, inclusive

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

YOU ARE BEING SUED BY PLAINTIFF:**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

NATHALIE DECRET

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court
400 McAllister Street

San Francisco 94102

CASE NUMBER
(Número de caso):

07C-07-462078

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jeffrey A. Feldman 154440

415-391-5555

Law Offices of Jeffrey A. Feldman

505 Montgomery Street, Floor 7

San Francisco, CA 94111

Gordon Park-Li

Deborah Steppe

DATE: APR 05 2007

Clerk, by

Deputy

(Fecha)

(Secretario)

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

Page 1 of 1

EXHIBIT D

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jeffrey A. Feldman 154440 Law Offices of Jeffrey A. Feldman 505 Montgomery Street, Floor 7 San Francisco, CA 94111 TELEPHONE NO.: 415-391-5555 FAX NO. (Optional): 415-391-8888 E-MAIL ADDRESS (Optional): jafinsf@aol.com ATTORNEY FOR (Name): Plaintiff		POS-015 FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco 94102 BRANCH NAME:		
PLAINTIFF/PETITIONER: Nathalie Decret DEFENDANT/RESPONDENT: Morgan Stanley & Co., Incorporated		
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL		CASE NUMBER: CGC-07-462078

TO (insert name of party being served): Morgan Stanley & Co., Incorporated

NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing: 4/17/2007

Jeffrey A. Feldman

(TYPE OR PRINT NAME)

(SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of (to be completed by sender before mailing):

1. ☒ A copy of the summons and of the complaint.
2. ☒ Other: (specify): Notice to Plaintiff

(To be completed by recipient):

Date this form is signed:

May 2, 2007
(TYPE OR PRINT YOUR NAME AND NAME OF THE PERSON
ON WHOSE BEHALF THIS FORM IS FILED)

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY,
ON WHOSE BEHALF THIS FORM IS SIGNED)

(SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF
ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

EXECUTIVE DIRECTOR

PROOF OF SERVICE BY FACSIMILE AND U.S. MAIL

I, Flora E. Cornett, a non-attorney, declare that:

I am employed in the County of San Francisco, California. I am a citizen of the United States, over the age of eighteen years and not a party to the within action. My business address is Morgan Stanley & Co. Incorporated, Legal and Compliance Division, 101 California Street, 2nd Floor, San Francisco, California 94111.

On May 3, 2007, I served the following document:

NOTICE AND ACKNOWLEDGMENT OF RECEIPT - CIVIL

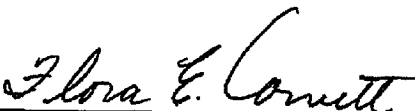
by placing a true copy thereof enclosed in a sealed envelope with all fees paid, with the United States Postal Service in San Francisco, California and via facsimile addressed to the person listed below:

Jeffrey A. Feldman 154440
Law Offices of Jeffrey A. Feldman
505 Montgomery Street, Floor 7
San Francisco, CA 94111
Ph.: (415) 391-5555
Fax: (415) 391-8888

I am "readily familiar" with this firm's practice of collection and processing correspondence for shipment. It is deposited with United States Postal Service on the same day in the ordinary course of business. I am aware that on motion of party served, service by United States Postal Service is presumed invalid if the postal cancellation date or postage meter date is more than one business day after the date of deposit for mailing in the affidavit.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 3, 2007 at San Francisco, California.


Flora E. Cornett